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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/198,018	11/23/1998	THOMAS W. ASTLE	130-125	1987

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EXAMINER

HANDY, DWAYNE K

ART UNIT PAPER NUMBER

1743

DATE MAILED: 12/04/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

cl 19

Office Action Summary

Application No.

09/198,018

Applicant(s)

ASTLE, THOMAS W.

Examiner

Dwayne K Handy

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1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21-23 and 30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1, 6, 7, 18 and 21 is/are rejected.
- 7) ☐ Claim(s) 2-5, 8-17, 22, 23 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 1, 6, 7, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eigen et al. (5,447,679) in view of Natelson (4,264,560). The Examiner believes applicant is familiar with the reference "Eigen" as Eigen was cited in a 102 rejection in the previous action. Eigen teaches a method of compound storage comprised of providing a transparent carrier tape (36) having two or more matrices of thermoformed chemical receiving wells (11) and simultaneously adding to the receiving wells a chemical compound via multiple pipette (column 14, lines 3-9). As stated by the previous Examiner, it was asserted that the tape may be considered as having a plurality of matrices since the wells could be grouped together in any particular manner.

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Eigen does not, however, teach the added limitation of "each of two or more matrices being separated longitudinally from an adjacent one of said two or more matrices by a space greater than a space separating adjacent wells".

Natelson teaches a clinical analytical system in which a reagent is encapsulated on a flat surface which is mated with a sample to cause a reaction. The resulting reaction is analyzed to determine the contents of the sample. A semi-continuous embodiment of the invention is shown in Figure 4 and described in column 11, lines 3-62. As shown in Figure 4, a reel containing encapsulated reagent in array form (214) is used to analyze samples (217) which are mated with the reagents on the reel. The array is analyzed. The arrays are separated to allow for the analysis of each sample separately without interference from the neighboring array. It would have been obvious to one of ordinary skill in the art to combine the spacing between the arrays of Natelson with the well arrays of Eigen. Both references teach the formation of arrays on a continuous or moving strip. One would space the arrays as shown in Natelson to prevent mixing of the contents in each neighboring array due to spilling or overflow while filling each array. As to the limitation of claim 7 which specifies the matrices, the Examiner believes the use of 8 X 12 arrays would be obvious to one of ordinary skill in the art. This array is common to microplates and would be obvious to provide for use with microplate compatible filling machines which may be used to fill the wells.

Response to Arguments

3. The Examiner agrees with applicant's submitted arguments and has removed the 112 rejections involving claims 9-13 and the limitation of removing the carrier tape "without the use of a knife structure". Also, the Examiner agrees that the amended claim 1 is no longer anticipated by the reference "Eigen". This claim has been addressed in a new rejection however. The remaining rejections involving the references Hansen, Tidemann, and Paquette have also been lifted in response to applicant's submitted arguments.

Allowable Subject Matter

4. Claims 2-5, 8-17, 22, 23 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shaber et al. (4,508,686) teach a film strip for the rapid test of a film processor. Flesher et al. (5,213,766) teach a liquid testing apparatus that uses a card supply formed from a continuous sheet with arrays (Figure 3).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K Handy whose telephone number is (703)-305-0211. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (703)-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0661.

DKH
November 30, 2003


Jill Warden
Supervisory Patent Examiner
Technology Center 1700